



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,630	07/28/2003	Moshe Shnaps	P-5722-US	4315
56639	7590	11/20/2008	EXAMINER	
EMPK & Shiloh, LLP			DINH, TIEN QUANG	
c/o Landon IP, Inc.				
1700 Diagonal Road			ART UNIT	PAPER NUMBER
Suite 450				3644
Alexandria, VA 22314				
NOTIFICATION DATE		DELIVERY MODE		
11/20/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PUSDKT@EM-LG.COM

Office Action Summary	Application No.	Applicant(s)	
	10/627,630	SHNAPS ET AL.	
	Examiner	Art Unit	
	Tien Dinh	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 August 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 25-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 25-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6474592. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention seems to be disclosed in U.S. Patent 6474592.

Claims 25-40 rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent no. 6474592.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference

under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2). The claimed invention is met by the disclosure of U.S. patent no. 6474592.

The terminal disclaimer filed on 5/24/05 was disapproved.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shnaps 6345784 in view of Redford 6113027 and Astle et al 6396816 and Fullerton 6549567. Schnaps discloses the method for impact assessment. The impact assessment unit (see figure 1a) has negotiation to access to resources and a communication systems 36, 39 that allows the platform electronic warfare system and the smart munition to communicate with each other.

See also column 7, lines 59-63. Schnaps is silent on the impact assessment unit being “connected” or attached to the platform electronic warfare system. Although applicant is correct in his response that Snap does mention that his system “makes use of abundant space available within a munition body...and relayed to the platform”, the applicant is advised to look at his disclosure in totality. Shnaps clearly teaches that an impact assessment unit that is on a platform electronic warfare system is well known. See column 7, lines 39-46. Shnaps also mentioned that the impact assessment units are "bulky" and “incorporation of such units into space limited platform such as for example, airplanes, is a virtual impossibility.” Shnaps’ opinions relating to the “bulky” and “virtual impossibility”, although respected, are not correct. Due to the miniaturizations of computers, "bulky" is not correct. Computers are so small in this day and age that the impact assessment unit can clearly be put inside the platform electronic warfare system. Hence, they are not bulky at all. As for the “virtual impossibility”, this statement is not correct since computers can be carried on the platform electronic warfare system. Aircraft in this day and age are big and powerful machine. See the B-52, F-15, etc. They can clearly carry small computers or the impact assessment units. Taken into account that computers are small and not bulky at all and that Shnaps clearly teaches that the impact assessment unit are well known to be stored on the platform electronic warfare system, it would have been obvious to one skilled in the art at the time the invention was made to have used the impact assessment unit on the warfare system as opposed to the smart munition since this allows the smart munition to carry more explosives. In addition, the examiner has brought forth Redford to show that a warfare platform carrying an impact assessment unit instead of the munition is well known (see column 3,lines 12-25) to further prove that it is possible for the warfare platform to carry the impact unit.

Although the examiner believes that the negotiating of resources are present in a computerized system (well known in this day and age) of Schnaps shown in figure 3, the examiner rejects the claims with the additional art of Astle et al to show that negotiating access is very well known. Astle et al teaches that resource allocations/negotiations are well known in this day and age. See figures 2 and 4 and the abstract.

It would have been obvious to one skilled in the art at the time the invention was made to have used a computerized resource allocation/negotiation system in Shnaps as taught by Astle et al to better allocate resources so the computer can operate quickly.

Re claims 26-28, the human interface unit is shown in figure 3 of Shnaps.

Re claim 29, since the impact assessment unit is on the warfare platform, the information from the onboard guidance system of the smart munition is received and processed on the warfare platform.

Re claim 32, the transmitter is part 36.

As for claim 33, the applicant has not provided any reasonable arguments as to why 2 gigahertz and 2.6 gigahertz is critical. Although the examiner maintains that this range is a design choice, the examiner brought in Fullerton to show that transmission of 2 gigahertz are well known. One skilled in the art would have used such frequency in Shnaps system as taught by Fullerton as a substitution of parts.

Response to Arguments

The examiner maintained the double patenting rejection until the terminal disclaimer has been sent in.

Applicant's arguments with respect to claims 25-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tien Dinh whose telephone number is 571-272-6899. The examiner can normally be reached on 12-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tien Dinh/
Primary Examiner, Art Unit 3644